Lastly, the appellant complained that he was not given an opportunity to be heard by Parliament before the two resolutions were passed and cited in support ss 24 and 25 of the Act. These sections provide:

> 24 Parliament may order any person guilty of an offence to attend before Parliament to be informed of or to receive any punishment which Parliament has decided to inflict upon him.
>
> 25(1) An order to attend before Parliament to be informed of or to receive any punishment which Parliament has decided to inflict upon any person shall be notified to such person by a summons under the hand of the Clerk issued by the direction of the Speaker.
>
> (2) In every such summons there shall be stated the time when and the place where the person summoned is required to attend and the summons shall be served on the person mentioned therein either by delivering to him a copy thereof or by leaving a copy thereof at his usual or last known place of abode in Singapore with some adult person.
>
> (3) The summons referred to in subsection (2) may be served by an officer of Parliament or by a police officer.

The two resolutions passed by Parliament represent judgments or adjudications by Parliament on the appellant, which were arrived at on the basis of the reports of the committee. Before the reports were presented to Parliament the committee gave to the appellant an opportunity to be heard, and he was heard. There is nothing in law to suggest that the appellant should be given another opportunity to be heard before the punishments were inflicted on him by Parliament. Sections 24 and 25 of the Act do not support the argument of the appellant. Section 24 emmpowers Parliament to summon a person 'guilty of an offence' to attend before Parliament to be informed of or to receive any punishment which Parliament 'has decided' to inflict upon him, and s 25 briefly sets out the procedure and manner in which such a person may be summoned to attend before Parliament. Parliament could pursuant to s 24 summon the appellant to attend before it to be informed of or to receive the punishments, if Parliament so wished; but in this case Parliament decided not to do so, and was clearly entitled so to decide.

In conclusion, we agree entirely with the following passage of the judgment of the learned judge (at pp 120-121 of the record of appeal):

> The issue raised by the defendant arose out of and relate entirely and directly to the internal proceedings of Parliament and involves the question how Parliament and its Committee of Privileges should regulate its own internal proceedings, matters beginning and terminating within the four walls of Parliament and which are clearly outside the jurisdiction of the courts. The defendant has failed to raise any triable issues or arguable issues which the courts have jurisdiction to try and the plaintiff is entitled to judgment.

For the reasons given above, we dismiss the appeal with costs. There will be the usual consequential order for payment to the respondent the amount deposited by the appellant as security for costs.

Appeal dismissed.

Reported by *PS Ranjan*

Chew Ming Teck v Collector of Land Revenue & Anor

COURT OF APPEAL (SINGAPORE) – CASE STATED NO 1 OF 1988
LAI KEW CHAI, CHAN SEK KEONG AND CHUA JJ
1 DECEMBER 1988

Land Law – Compulsory acquisition – Agreement for lease between second respondents and appellant – Grant of lease to appellant contingent upon appellant vacating sitting tenants and erecting covenanted buildings – Subsequent compulsory acquisition of land by government – Award of $1 nominal value by Collector of Land Revenue for appellant's interest – Appeal against Collector's award – Whether appellant's contingent interest in land quantifiable and capable of being valued on a realistic basis

Land Law – Compulsory acquisition – Hearing of appeal before Land Appeals Board – Whether Collector of Revenue had locus standi to appear – Land Acquisition Act (Cap 152, 1985 Ed), s 25

This is a case stated for the opinion of the court pursuant to s 30(2) of the Land Acquisition Act (Cap 152, 1985 Ed) ('the Act'). The second respondents ('the trustees') were the leaseholders of a piece of land and the appellant was a prospective developer of the land with a building sublease from the trustees. On the land were some semi-permanent shophouses in a poor state of repair which were occupied and were being built before 1947. The sublease was for an initial period of five years during which the appellant covenanted, inter alia, to negotiate, settle and pay compensation to all sitting tenants to his own account, demolish the existing buildings and redevelop the land in accordance with the terms of the sublease. The trustees covenanted that upon the completion of the new buildings they would grant to the appellant a lease of 30 years commencing from the date of completion with two options of 30 years each. The appellant then applied to the competent authority for planning permission to erect a shopping centre/office on the land. This application was rejected by the competent authority. By a declaration published in the Government Gazette Extraordinary of 29 June 1970, notice was given of the government's intended acquisition of the land. The Collector of Land Revenue ('the Collector') subsequently made his award dated 6 June 1977 in the sum of $511,650 and apportioned $1 as the value of the appellant's interest in the land. The appellant filed a petition of appeal to the Land Appeals Board ('the Board') on the following issues: (a) whether the Collector had locus standi to appear before the Board in an appeal against apportionment and (b) whether the Collector was correct in law in concluding that the appellant's interest in the land was nominal only and therefore correctly apportioned at $1. At the conclusion of the hearing, the Board ruled that the Collector had locus standi in the proceedings and that the apportionment of the Collector was correct. The question for the court to determine is whether the order of the Board is correct. The appellant contended that

the Collector took into account certain matters which were errors of fact and law, including the fact that planning permission for redevelopment of the property had been refused when the case was that, but for the acquistion, planning permission would have been granted.

Held:

(1) Section 25 of the Act is conclusive on the first issue. The Board's decision that the Collector has locus standi before the Board is correct.

(2) In the court's view, when the Collector decided that the interest of the appellant in the land was 'nil' and for which he apportioned a nominal sum of $1, he did not allow the refusal of planning permission to the appellant to influence his valuation, either up or down. No reference was made to this factor in his first grounds of award as well as his second grounds of award. The application by the appellant for planning approval did not increase the value of the land since it was already zoned under the master plan for main shopping and office use. There is no evidence that the appellant would have obtained planning permission in excess of the permissible density or plot ratio which would have increased the value of the land as a development site.

(3) The Collector was in error in respect of certain findings of fact. However, these errors do not singly or collectively invalidate his apportionment.

(4) The evidence does not prove, on a balance of probabilities, that the appellant made any claim for compensation for the market value of his interest based on the residual method of valuation. The appellant's intention was clearly to make a claim for loss of profits, and not a claim for the market value, which was inadmissible in law.

(5) Even if the Collector were to attempt to give a market value to the appellant's interest, he could only have done so if there were made available to him satisfactory evidence to show that the appellant's interest had such a value. The appellant failed to provide any such evidence to the Collector simply because it was incapable of being valued on any rational or realistic basis. In the court's view, the market value of the appellant's contingent interest in the land is unquantifiable.

Cases referred to

1 *Naresh Chandra Bose* v *State of West Bengal* AIR 1955 Cal 398 (distd)
2 *State of Madras* v *BV Subramania Iyer* AIR 1962 Mad 313 (distd)
3 *Pointe Gourde Quarrying & Transport Co Ltd* v *Sub-Intendent of Crown Lands* [1947] AC 565 (refd)
4 *Melwood Units* v *Commissioner of Main Roads* [1979] AC 426 (refd)
5 *Re Robinson's* [1980] 1 MLJ 255 (refd)
6 *Harris* v *Minister for Public Works* (1912) 14 CLR 721 (refd)

Legislation referred to

Land Acquisition Act (Cap 152, 1985 Ed) ss 10(2), 23, 25, 30(2), (5), 33(1)(c)

David Widdicombe QC (*Harry Wee* with him) for the appellant.

Malcolm Spencer QC (*Khwaja Imran Hamid* with him) for the first respondent.

Malcolm Spencer QC (*Roy Sharma* with him) for the second respondent.

Cur Adv Vult

Chan Sek Keong J (delivering the judgment of the court): This is a case for the opinion of this court stated pursuant to s 30(2) of the Land Acquisition Act (Cap 152, 1985 Ed) ('the Act'). The following facts are agreed:

(1) By declaration No 2062 dated 24 June 1970 and published in the Government Gazette Extraordinary of 29 June 1970, notice was given of the intended acquisition of 22,936 sq ft or thereabouts of land situate in the district of Singapore town being Lot 93 TS XXVII for a public purpose, namely, urban redevelopment. The lot (hereinafter called 'the land') is bounded on three sides by roads, namely, Orchard Road, Koek Road and Cavenagh Road, and on the fourth side by the adjoining Lot 94. On the land were some two-storey semi-permanent brick/tile/timber shophouse in a poor state of repair, namely, Nos 156/170 (even) Orchard Road, 2/10 Koek Road and 1/7 (odd) Cavenagh Road. The buildings were occupied, and being built before 1947 are subject to the Control of Rent Act (Cap 58, 1985 Ed).

(2) The second respondents ('the trustees') are the leaseholders of the land for the unexpired period of 999 years from 1890. The freeholder is one Edwin Koek. The appellant is a prospective developer of the land with a building sublease from the trustees dated 15 June 1968. The sublease is registered as No 163 in Vol 1703 in the Register of Deeds ('the sublease').

(3) The first respondent ('the Collector') made his award on 11 March 1974 in the sum of $511,650. The award was not apportioned among the interests in the land. Notice of appeal against the award was filed by the appellant on 16 March 1974, and by the trustees on 21 March 1974.

(4) On 8 August 1974 the Collector took possession of the land pursuant to s 16 of the Act.

(5) On 5 April 1976 the Collector served his grounds of award. On 17 April 1976 the appellant filed his petition of appeal.

(6) The aforesaid award was defective in that it contained no apportionment, and the Collector made a fresh award dated 6 June 1977 in the same sum of $511,650 apportioned among the persons interested as follows: (i) Edwin Koek, $1 (ii) the trustees, $511,648 (iii) Chew Ming Teck, $1. The appellant filed a further petition of appeal dated 14 June 1977 and a fresh notice of appeal dated 17 June 1977.

(7) On 5 October 1977 the Collector served his grounds of award. The appellant filed a fresh and further petition of appeal dated 12 October 1977.

(8) On 23 August 1978 the Collector served notice of a supplementary award in the sum of $38,350, apportioned in full to the trustees, with nil to Edwin Koek and the appellant.

(9) On 10 February 1981 the appellant filed an application for the decision of the Appeals Board on preliminary points. Affidavits were affirmed by Foo Kea Toh on 7 July 1981 on behalf of the Collector and by Chew Ming Teck on 8 July 1981 on behalf of the appellant. Neither witness was cross-examined.

At the hearing before the Land Appeals Board ('the Board'), the parties agreed to limit the issues to the following, viz:

(i) whether the Collector was correct in law in concluding that the appellant's interest in the land was nominal only, and therefore correctly apportioned at $1; and

(ii) whether the Collector had locus standi to appear in an appeal against apportionment.

At the conclusion of the hearing on 14 July 1981, the Board ruled that (1) the Collector had locus standi in the proceedings and (2) the apportionment of the Collector was correct, and ordered the appellant to pay the costs of the Collector and of the trustees.

The question for this court to determine is whether the order of the Board is correct.

Locus standi of Collector

It is convenient to deal with this issue first as it is a simple issue of law. The locus standi of the Collector before us is not disputed: see s 30(5) of the Act, but his locus standi before the Board is disputed. Counsel for the appellant submits that the Collector has no locus standi before the Board in an appeal relating to the apportionment of his award. He cites in support two decisions of the Indian courts decided under the Land Acquisition Act 1894 on which the Act is based. They are *Naresh Chandra Bose* v *State of West Bengal*[1] and *State of Madras* v *BV Subramania Iyer*.[2] He also refers to three Indian textbooks for the same proposition, viz *Aggarawala on Compulsory Purchase of Land in India*, 4th Ed, p 537; *Gosh & Row on Land Acquisition*, p 408 and *Sanjiva Row on Law of Land Acquisition & Compensation*, p 920.

We agree with counsel for the respondents that those decisions and textbook statements are applicable to a case where the Collector refers a dispute on apportionment to the High Court for determination under s 10(2) of the Act. They have no application to the present case which is an appeal against the Collector's apportionment under s 23 of the Act. The reason is that in an appeal the Collector has a right to defend the correctness of his apportionment whereas in a reference he has nothing to defend.

In any event, s 25 of the Act is conclusive on this point. Section 25 provides that:

> (1) On receipt of a petition of appeal, the Registrar shall forthwith forward one copy thereof to the Collector and shall, as soon as possible thereafter, fix a time and place for the hearing of the appeal and shall give 14 days' notice thereof both to the appellant and to the Collector.
>
> (2) The appellant and the Collector shall attend, either in person or by an advocate and solicitor, at such times and places as may be fixed for the hearing of the appeal.

Accordingly, we are of the opinion that the Board's decision that the Collector has locus standi before the Board is correct.

Value of appellant's rights in sublease

The sublease was for an initial period of five years during which the appellant covenanted to (a) pay to the trustees a premium of $15,300.63 per annum; (b) negotiate, settle and pay compensation to all sittting tenants for his own account; (c) pay all property tax and outgoings in respect of the property and upon obtaining vacant possession thereof; (d) pull down the existing buildings and (e) at his own cost and expense erect and build on the land a multi-storey building of not less than four storeys and such additional storeys as may be approved by the competent authority and economically feasible. The trustees covenanted that upon the completion of the new buildings, they would grant to the appellant a lease of 30 years commencing from the date of completion or the first letting of any part of the building upon and subject to certain terms and conditions which provide, inter alia, for the lease to be renewed for two further terms of 30 years each upon and subject to certain terms and conditions.

The sublease also provided for an option to renew for another four years, so that in effect, and this can hardly be disputed, that the appellant had altogether nine years to obtain vacant possession of the land, demolish the existing buildings and redevelop the land in accordance with the terms of the sublease.

On 18 July 1968, the appellant applied to the competent authority for planning permission to erect a 12-storey shopping centre/hotel with a penthouse. This application was not considered by the competent authority as it contravened certain planning restrictions and regulations. The appellant accordingly withdrew the application and submitted a fresh application on 7 July 1969 for the erection of an eight-storey shopping centre/office.

The competent authority rejected this application on 3 September 1969 on the ground that the site was affected by a redevelopment scheme for the area. The appellant was informed of the decision on 21 October 1969. The appellant appealed against the decision on 17 November 1969.

In a statement submitted by the Acting Building Surveyor, Development Control Division, in connection with this appeal, it was stated that:

As far as the planning/technical requirements are concerned, the proposed site is within the main shopping zone of the master plan, and therefore, there would be no particular objection to development of the site for a shopping centre/office building. With regard to other technical requirements, like plot ratio, car parks,the applicant has taken these into account.

On 24 June 1970, the government gazetted a declaration under the Act for the acquisition of the land. On 27 June 1970, the competent authority informed the appellant that his appeal against the refusal of planning permission would be heard on 28 July 1970. It appears from the record that this appeal was heard on 6 October 1970 and the appeal was disallowed on 28 October 1970.

In the meantime, the appellant had on 21 July 1970 written to the Collector of Land Revenue objecting to the proposed acquisition of the land on the grounds, inter alia, that the land was not being acquired for a public purpose and as a result of the acquisition that he would suffer a loss of not less than $102,000 per month (ie $1,224,000 pa) by way of rental and also that he had incurred substantial expenses in obtaining the sublease.

The Collector in a letter dated 12 August 1970 rejected the appellant's objection and said that he would proceed with the inquiry for compensation. On 20 August 1970 and 8 September 1970, the Collector wrote to the appellant's solicitors to submit the appellant's claim for compensation, stating his exact interest in the land and the amount and particulars of his claim and the basis or mode of valuation.

On 18 September 1970, the appellant's solicitors replied, inter alia, as follows:

Our client is therefore entitled to recover all costs and incidental expenses incurred for obtaining the lease, expenses incurred between the date of the lease and the date of acquisition.

(1)	*Expenses incurred for obtaining the lease dated 15 June 1968*	
(a)	Cost for RE Redrup, Advocate & Solicitor	$ 2,500
(b)	Costs for Donaldson & Burkinshaw, Advocate & Solicitor	$ 5,461.50
(c)	Costs for Attorney General, Singapore	$ 50.00
		$ 8,011.50
(d)	Incidental expenses incurred from time to time in negotiations	$11,0000
(2)	*Expenses incurred after obtaining lease*	
(a)	Architects' fees to M/s Design & Consulting Team C3, No 10, Battery Road, Singapore	$50,000
(b)	Paid for service to agents to negotiate with tenants for vacant possession	$ 2,000
(c)	Bank interest payable for deposit of $106,000 for period 17 September 1968 to 4 February 1969	$ 5,830
(d)	Solicitors costs for appealing against decision of competent authority	$ 1,500
(3)	*Losses suffered as a result of acquisition*	
(a)	Loss of profit in the sum of $500,000 pa for a period of six years	

We await to hear from you in due course.

On 21 September 1970, the Collector requested the appellant to submit the receipts for his expenses to and to reconcile the claim of $500,000 pa for six years and the claim for $1,224,000 pa and also how the commencing and ending dates of the six-year period and the $500,000 were arrived at.

On 7 October 1970, the appellant's solicitors submitted the receipts for items 1(a) and (b) and said that fees under items 2(a) and (d) have not been paid and no receipts were obtained for items 1(d) and 2(b). The appellant, in the same letter, then claimed $500,000 and abandoned his claim for other loss of profits.

On 9 October 1970, the Collector wrote again to the appellant's solicitors and requested (i) the particulars for item 2(a); (ii) the names and addresses of the agents mentioned in item 2(b); (iii) the details of the expenses in item 1(d) amounting to $11,000; (iv) details of costs of construction amounting to $1.1 million; and (v) the basis of the claim for $500,000.

On 16 November 1970, the appellant's solicitors replied and, inter alia, gave the following particulars of the costs of construction:

4 ... estimated costs of the building are as follows:

(a)	Super structure of building 68,000 sq ft at $10 per sq ft	$ 680,000
(b)	Piling cost	$ 120,000
(c)	Interior decorations and special services (aircon & lifts etc)	$ 150,000
(d)	Connection fees for water, electricity and sewer	$ 40,000
(e)	Architects' and consultants' fees	$ 150,000
	Total	$1,140,000

5 With regard to para 6:

(a)	Income from rental	$1,224,000
(b)	Less assessment of $400,000 Less income tax of $300,000	$ 700,000
	Balance	$ 524,000

6 Our client is only claiming $500,000 per annum as set up above, but as the market stands today, the income per year will definitely be more than $500,000. The period of claim is six years which our client thinks is a fair period under claim. If permission for development were given in December 1969, the building could be completed by June 1971, and from 1 July 1971, revenue from rental would have been received.

On 28 November 1970, the Collector replied, inter alia, as follows:

I note that the claim is based on the assumption that your client could obtain planning approval to construct a shopping cum office complex on the subject land.

However, as you are aware, your client was given a five-year lease for purpose set out in the indenture of lease registered in Vol 1703 No 163 and your client's application for planning approval had been turned down by the competent authority. I will therefore proceed to issue my award taking into consideration, among other things, planning refusal in respect of your client's application.

At the inquiry for compensation before the Collector, the trustees made a claim for $573,400 for the land without vacant possession. The claim was supported by a valuer's report which, inter alia, took into account the redevelopment potential of the land. The valuation was based on eight comparable sales of similar properties in similar condition in the vicinity of or the same location.

The appellant also attended the inquiry with his solicitor. He submitted a claim for $50,000 for his interest in the land.

The relevant portions of the Collector's grounds of award are as follows:

8 At the date of the acquisition Chew Ming Teck had not for two of the five years initially provided by the sublease done anything towards fulfilling the obligations undertaken by him as follows:

(i) the tenants notwithstanding the sublease continued to pay their rents to the trustees;
(ii) Chew Ming Teck has never paid the annual premiums of $15,300.63 to the trustees as provided by cl 2(a) of the sublease;
(iii) Chew Ming Teck has never paid the property tax and other payments as provided by cl 2(c) of the sublease.

9 I am satisfied that no legal estate in the subject land passed to Chew Ming Teck and that he had not entered upon the lease, ie gone into possession. I regard the sublease dated 5 April 1968 as no more than an agreement to enter into a 30-year lease provided Chew Ming Teck fulfilled the obligations he had undertaken to perform by the sublease.

10 The claim of $500,000 for six years is based principally on the realizable potential of the land. I find it difficult to reconcile this with the trustees' claim as there is no connection between the claim which works out to $3 million and the value of the land taking into account its realizable potential. Furthermore no valuation report was submitted by Chew Ming Teck. However, the trustees did and their valuer valued the land taking into account its realizable potential at $25 psf or $573,400.

11 In reality Chew Ming Teck's claim is a claim for loss of profit and this is how it is set out in Loganathan's letter of 18 September 1970. If this is so then Chew Ming Teck's claim is insupportable as it does not come under any of the provisions of s 33 before it was amended by Act 66 of 1973 except perhaps s 33(1)(d) before the amended but loss of profit in a non-existent business is not loss of actual earnings. I regard Chew Ming Teck's claim as being speculative.

12 In view of the above, Chew Ming Teck's interest in the compensation to be made on account of the acquisition is nil and thus the apportionment of $1 supportable. The Collector realizing that the award dated 11 March 1974 was defective then proceeded to issue a fresh award on 6 June 1977 and the award contained an apportionment as follows:

(i) to the freeholder ...$1
(ii) to the trustee ... $511,648
(iii) to Chew Ming Teck ... $1

13 In making the award of $511,650 (subject to tenancies), the Collector has taken into consideration the following matters:

(i) The master plan zoning is main shopping/service road.
(ii) The encumbrances on the subject land.
(iii) The type of construction and the state of repair of the building erected on the subject land.
(iv) Planning restrictions on the land.
(v) The comparable sales/accepted award in the vicinity viz:
  (a) Property at Nos 328-346 (even) Orchard Road with an area of 10,162 sq ft zoned as main shopping at $29.52 psf as at April 1971.
  (b) Property at Nos 9 Cavenagh Road and 12 Koek Road (behind the subject property) with an area of 21,917 sq ft zoned as main shopping was awarded at $19.16 psf (enc) (accepted) gazetted on 29 June 1970.

The appellant has challenged the validity of the Collector's apportionment of $1 for the appellant's interest. The appellant says that the Collector has taken into account the following matters which he says are errors of fact and law, viz:

(a) that planning permission for redevelopment of the property had been refused when the case was that, but for the acquisition, planning permission would have been granted;
(b) that the appellant had not paid the annual premium under the sublease or the property tax on the land when the fact was that the trustees had agreed to collect the rents and to pay the premium as well as the property tax;
(c) that there had been no negotiations for vacant possession with the sitting tenants when the fact was that the trustees and the appellant had made preparations for obtaining vacant possession but that this was aborted by the acquisition;
(d) that the appellant had a five-year sublease when he also had an option to renew for another four years, which period of nine years would give him sufficient time to develop the property;
(e) that the appellant had not obtained permission to pull down and had not pulled down any of the buildings on the property when there was no necessity for him to do so until planning permission had been obtained;
(f) that the appellant had no legal estate in the property but only an agreement for lease when the sublease had been registered under the Registration of Deeds Act.

Counsel for the respondents, in reply, submits that the Collector in making the apportionment did not take into

account the matter referred to in para (a), that he took into account the matters in paras (b), (c), (d), (e) and (f), but that (b), (d) and (f), although incorrect, were immaterial and that (c) and (e) were in fact true. Counsel also submits that as the appellant has made no claim before the Collector for the market value of his interest in the land but only for loss of profits which he might have made but for the acquisition, the Collector's apportionment cannot be faulted.

The principle of law that is involved in the submission based on para (a) is that land must be valued for compensation leaving out of account any effect on value, either up or down, of the acquisition itself or the scheme underlying it: see *Pointe Gourde Quarrying* v *Sub-Intendent of Crown Lands*[3] and *Melwood Units* v *Commissioner of Main Roads*.[4] This principle, counsel for the appellant submits, also applies to both the valuation of the land as well as the apportionment, ie the appellant's interest in the land must be valued by leaving out of account any effect on the value of the compulsory acquisition. Counsel for the respondents concedes this point but submits that nevertheless the value of the appellant's interest is nominal.

The contention of counsel for the appellant is that the Collector, when valuing the appellant's interest, has assumed that there is a refusal of planning permission but, when valuing the trustees' interest in the land, has assumed that planning permission has been granted to the trustees; accordingly, it is argued, this approach contravenes the principle established by the Privy Council decisions in *Pointe Gourde*[3] and *Melwood*.[4] This argument is related to the appellant's further argument that the appellant's application for planning permission has resulted in an increase in the market value of the land.

It cannot be doubted that the Collector had in his letter of 28 November 1970 explicitly stated that he would proceed to issue his award taking into consideration, for his interest in among other things, planning refusal to the appellant. But it is also clear that the letter of 28 November 1970 was written in response to the appellant's claim for loss of profits of $500,000 per annum and the Collector was saying no more than that the claim for those profits was based on the assumption that the appellant could have obtained planning approval to construct a shopping/office complex on the land. In other words, the Collector was merely saying: 'I cannot accept your claim for loss of profits because until you have obtained planning permission and put up the buildings, you have no profits.' If this principle of valuing the appellant's potential loss of profits breaches the principle in *Pointe Gourde*[3] and *Melwood*,[4] it has no consequence in the context of this case as the claim for loss of profits was in any event inadmissible by virtue of s 33(1)(c) of the Act: see *Re Robinson's*.[5]

In our view, when the Collector decided that the interest of the appellant in the land was 'nil' and for which he apportioned a nominal sum of $1, he did not allow the refusal of planning permission to the appellant to influence his valuation, either up or down. No reference was made to this factor in his first grounds of award as well as his second grounds of award. It is true, as pointed out by counsel for the appellant, that the Collector once again in his affidavit of 7 July 1981 and filed in these proceedings referred to the refusal of planning permission to the appellant, but again this statement was made in reference to the appellant's claim for loss of profits and not to his claim for market value since the Collector in the same affidavit deposed that no claim was made on the basis of market value.

We also agree that if any planning permission has been granted for the redevelopment of the land it would have enured to the benefit of the land and to all interests therein. There is therefore no question of the Collector having assumed the grant of planning permission to the trustees' interest but not to the appellant's interest.

Accordingly, we agree with counsel for the trustees that there is no substance in the complaint in para (a). In our view, the application by the appellant for planning approval did not increase the value of the land since it was already zoned under the master plan for main shopping and office use. There is no evidence that the appellant would have obtained planning permission in excess of the permissible density or plot ratio which would have increased the value of the land as a development site. We do not think that the Act which was in 1973 amended to include s 33(5)(e) has any relevance to this point or affects adversely the submission of counsel for the respondents on this point.

With regard to the other paragraphs, we agree with counsel for the appellant that the Collector was in error in respect of the matters in paras (b), (d) and (f). It was not necessary for the appellant to pay the premium or the property tax; to all intents and purposes, he had a sublease for the residue of seven years, in three of which he had a legal estate. However, we are of the view that these errors do not singly or collectively invalidate his apportionment for the following reasons: firstly, there is no suggestion that the Collector treated these factors as having been affected by the acquisition or regarded the appellant's alleged failure to pay the premium and the property tax as a breach of covenant sufficient to entitle the trustees to cancel the sublease. Secondly, it is conceded by counsel for the appellant that the sublease in itself has no value at all. The value, if any, of the appellant's interest in the sublease was not in the right of enjoyment of the land for nine years but in what counsel described as the agreement for lease contained in the sublease.

We turn now to the submission that the appellant made a claim for compensation for the market value of his interest in the land based on the residual method valuation (which involves determining the present capital value of the developed land less the cost of construction and other expenses necessary to carry out the development). The submission is that the Collector was aware of the nature of the appellant's claim and that he had it in mind when he asked the appellant to furnish him information on the costs of construction etc.

In our view, the evidence does not prove, on a balance of probabilities, that the appellant made any claim for the market value of his interest based on the residual method of valuation. All he did was to give to the Collector at the latter's request some untested data to justify his claim for loss of profits. The appellant's intention was clearly to make a claim for loss of profits and not a claim for the market value. He could not have so intended as he did not even provide sufficient data upon which the Collector could have applied that method. The result was, and in fact, the Collector did not use this method of valuation, as is clearly evident from his grounds of award. He used the comparable sales method, which is generally regarded as the most reliable method of valuation for land.

At the inquiry, the appellant did make a claim for $50,000 for his interest in the land but the Collector was unable to entertain this claim as it was not supported by any evidence or any known method of valuation. In other words, the quantum of the claim was arbitrary.

Counsel for the appellant has also submitted that as the Collector has a statutory duty under s 10(1)(c) of the Act to apportion the award amongst the interested parties even if they do not make a claim, the fact that the appellant has not made a proper claim for his interest does not absolve the Collector from valuing his interest at market value. There are, in our view, two answers to this submission: firstly, the appellant made two claims, one based on loss of profits which was inadmissible in law and the second for $50,000 which was not provable and the Collector made his apportionment on the basis of those claims; secondly, even if the Collector were to attempt to give a market value to the appellant's interest, he could only have done so if there were made available to him satisfactory evidence to show that the appellant's interest had such value. In our view, the appellant failed to provide any such evidence to the Collector.

In this connection, counsel also submits that the Collector is estopped from saying that the appellant's interest in the land has no value since he has valued it at $1. We do not accept this subsidiary argument as para 12 of the Collector's grounds of award makes it clear that he has decided that the appellant's interest had 'nil' value although he awarded him a nominal sum of $1 by way of apportionment. The value of the appellant's interest in the land may yet be 'nil' even though it has been argued by counsel for the trustees that it is in any event not more than $1.

We come now to the nub of the appellant's case. It is that, as his counsel has put it, whatever might be the value of the appellant's interest in the land, common sense tells him that it could not be $1 as, but for the acquisition, the appellant would have obtained planning permission to develop and would have developed the land in accordance with the terms of the sublease, whereupon the agreement for lease would have matured into a lease for 30 years with two options of 30 years each. In our view, the whole of the appellant's case is based on the assumption that but for the acquisition, the appellant would, in the natural course of events have observed and performed his part of the bargain in terms of the sublease, ie to vacate the sitting tenants, demolish the existing buildings, and complete the covenanted buildings, all within a period of about seven years. It is only when this assumption is true that the appellant would be entitled to be granted a lease for 30 years with two options for 30 years each. In our view, it is therefore necessary for the appellant to satisfy the Collector that on a balance of probabilities he would have been able to do this.

Counsel for the appellant has referred to the fact that the appellant was not cross-examined on his affidavit at the hearing before the Board. Paragraph 12 of the said affidavit reads:

> I did not envisage any particular difficulty in obtaining vacant possession. There is nothing unusual in private developers obtaining vacant possession of a site like this. It must have been done on many other sites in Singapore. I have myself had experience of successfully obtaining vacant possession of development sites. It is only a matter of time and money. In this case most of the traders were poor – for example coffee shops, barber's shop, bicycle repairs etc. There were only one or two substantial traders, who might be more expensive to move. The property was old, semi-permanent and in a poor state of repair. Many of the occupiers were holding in breach of covenant, which in my experience usually facilitates removal. Some would be attracted by the offer of accommodation in the new development. I have every confidence that I would obtain vacant possession reasonably soon after obtaining planning permission, which but for the acquisition would have been granted in October 1969. Even before that date I and Syed Mohamed bin Ali Alsagoff had together personally started to gather information and make inquiries with a view to vacant possession as soon as planning approval was obtained.

The appellant was not cross-examined on his affidavit. However, we do not think that for this reason alone the respondents have accepted what the appellant has deposed in para 12 of his affidavit as the truth. They are clearly statements not of fact but of opinion.

The factual position in this regard at the date of the acquisition was as follows:

(i) there are 20 chief tenants on the land; the sublease suggests that there were also other persons holding under them although their number was not stated therein;
(ii) the appellant had about seven years to remove the tenants and subtenants and also to complete the development of the vacant land.

It is necessary to consider whether, in these circumstances, on the balance of probabilities, the appellant would have been able to vacate the sitting tenants and erect the covenanted buildings within seven years, at a cost of development which would have given him a net value in excess of such cost. We accept that there were certain matters which were capable of being determined objectively, eg the time it would take to complete the development, the cost of construction, the cost of financing etc but we do not accept that the two matters of fact we have highlighted were ascertainable with any acceptable degree of accuracy.

There is no evidence as to whether the tenants were willing to move out and when they would move out. We can accept the appellant's assertion that removing the tenants was a matter of time and money. But as the buildings on the land were subject to rent control, it would not be possible to ascertain with any degree of accuracy what amount of time and money would be required to remove the tenants and subtenants, since he had not even begun to negotiate with them. If he had and they had put forward their claims, these claims would have formed a rational basis for estimating the probable cost of removing them. As it was, there was no yardstick by which the time for vacating the tenants or the cost of removing them could be measured. Accordingly, what the appellant has stated in his affidavit was pure surmise. We do not need to take judicial notice of the fact that all it needed to frustrate the contingent rights of the appellant was for one single tenant to refuse to move out except at a price which might not have been either economical or otherwise acceptable to the appellant.

It is clear to us that the appellant made no attempt to put a market value on his contingent interest in the land simply because he could not have done so realistically nor can he do it even today. This was presumably what the Collector had in mind when he stated that the appellant had not even begun to negotiate with the tenants to vacate the land.

These imponderables may also explain why, even at the hearing before us, counsel for the appellant made no attempt to put a value on the appellant's interest in the agreement for lease. Of course, he explained that it was unnecessary for him to do so since the appellant's appeal against the Collector's award (as distinct from the apportionment) was not before this court. Nevertheless, in our view, the answer is plain. It could not be done as it is dependent on the fulfilment of certain contingencies which was beyond judicial proof, even on the standard of a balance of probabilities. Any value that is put on the appellant's interest would be 'conjecture of the most nebulous character': per Isaac J in *Harris* v *Minister for Public Works*[6] cited in *Brown on Land Acquisition* 1972 at p 213.

There is an apparent paradox in the claim of the appellant. On the one hand, his counsel has conceded that the Collector's valuation of the land has taken into account its development potential and in conformity with the principle laid down in *Pointe Gourde*[3] and *Melwood*.[4] Yet if his arguments are accepted, it would involve the possibility of the appellant's claim being valued in excess of the whole of the compensation actually awarded for the land and in respect of which the trustees have not appealed, even though the appellant's contingent interest must be subsumed within the larger interest of the trustees in the land. To be fair to counsel, it is of course the appellant's position that he is still entitled to proceed with his appeal against the quantum of award. But, if he accepts that the Collector has used the comparable sales method of valuation in valuing the land and that the valuation conforms to the principle in *Pointe Gourde*[3] and *Melwood*,[4] then we have difficulty in understanding how the appellant can prove that the Collector's award can be wrong in law. Any claim in excess of the Collector's award can only succeed if the land were valued as if it had already been developed.

Any attempt to quantify the market value of the appellant's contingent interest in the land in such appeal would be subject to the same evidentiary difficulties we have outlined. Perhaps this factor explains why counsel for the appellant indicated in the course of his submission that if the appellant were to succeed in this appeal, he might not necessarily proceed with his appeal against the award but might seek a share of the amount accepted by the trustees. In our view, the market value of the appellant's contingent interest in the land is unquantifiable. In any event, we do not think that it is quantifiable in a way which can discharge the burden on the appellant to prove that the apportionment of the Collector is wrong.

Section 25(3) of the Act provides that in an appeal the onus of proving the award (including the apportionment) is inadequate is on the appellant. The proceedings before us are, of course, not by way of appeal, but by way of case stated, but in the circumstances in which the case is stated for our opinion, there is no reason to suggest that the burden of proof is any different.

We summarize our findings as follows:

(1) the Collector has locus standi before the Board;
(2) although the Collector was in error in respect of certain findings of fact, these errors do not invalidate his apportionment;

(3) the appellant made no claim based on market value but on market value but a claim based on loss of profits which was inadmissible; he also made an arbitrary claim for $50,000 which the Collector was correct in rejecting;
(4) the appellant had a contingent interest in the land which at the date of acquisition was incapable of being valued on any rational or realistic basis;
(5) in any event, the appellant has, in the circumstances of the case, failed to prove that the apportionment of $1 for his interest is inadequate.

For the above reasons, we are of the view that the decision of the Board on both issues is correct. There will be an order accordingly and the appellant will pay the costs of both the respondents in these proceedings.

Order accordingly.

Solicitors: *Braddell Brothers*; *Tan Rajah & Cheah*; *NS Kang*.

Reported by *Ng Sheau Jiuan*

Chan Nai Inn v Lim Choi Chay

HIGH COURT (SINGAPORE) – SUIT NO 415 OF 1984
CHAN SEK KEONG J
1 NOVEMBER 1988

Tort – Negligence – Collision between two motor boats travelling in opposite directions on river – Liability of parties – Both parties' testimony the opposite of each other – No objective evidence as to how or where the collision occurred – Court's findings based on most probable scenario – Equal apportionment of liability

The plaintiff is the mother of the deceased who died as a result of a collision between the deceased's motor boat and the defendant's motor boat whilst travelling in opposite directions on a river. As a result of the accident, the plaintiff instituted a suit for damages for negligence against the defendant. During the trial, material objective evidence concerning the directional course of the river was not before the court and both police reports lodged by L, a passenger on the deceased's motor boat, and the defendant did not state where exactly on the river the collision occurred or how it occurred. In fact, L's testimony was directly the opposite of the defendant's testimony. The other unusual fact was that the deceased's motor boat was damaged on its starboard side.

Held, both parties were equally liable for the collision:

(1) There is no evidence as to the respective positions of the two boats on the river immediately before or how they collided into each other or how one collided into the other.

(2) Taking into account the fact that the collision occurred at about 5 to 6 am when it was still dark and when there would be little traffic on the river and that it was not safe to travel near the banks, the natural inclination would be for the deceased or the defendant to keep to the centre of a narrow channel and it is probable that both boats collided as both were turning at the bend of the river. Accordingly, the principle in *Baker* v *Market Harborough Industrial Co-Operative Society*[1] applied and both must be held to blame equally.

(3) Even if the finding that the two boats were probably travelling in the centre of the river when they collided was wrong, the court's finding on liability would be the same on another ground. This was that the damage to the deceased's boat, being inflicted on its starboard side, meant that both boats were travelling on their wrong sides and as there was no other evidence to the contrary, both must be held to blame. Since the court is unable to determine the degree of blameworthiness of each of them, both are equally to blame.

Cases referred to

1 *Baker* v *Market Harborough Industrial Co-Operative Society* [1953] 1 WLR 1472 (folld)
2 *W & M Wood (Haulage) Ltd* v *Redpath* [1967] 2 QB 520 (refd)
3 *Davidson* v *Leggett* 113 SJ 409 (refd)
4 *Knight* v *Fellick* [1977] RTR 316 (refd)
5 *Howard* v *Bemrose* [1973] RTR 32 (folld)

Karuppan Chettiar and *Srinivasan Selvaraj* for the plaintiff.
Brar Pritam Singh for the defendant.

Cur Adv Vult

Chan Sek Keong J: This is an unusual case in that it involves a collision between two motor boats whilst travelling in opposite directions on a river which has since been reclaimed by the government.

The plaintiff is the mother of one Lim Boon Seng ('the deceased') who died as a result of the collision. On 3 July 1981, Lim was navigating motor boat no SF9469 along Serangoon river and proceeding towards the village of Kangkar. In other words, he was going inland. He had a passenger, one Lek Seng Thiam, who was sitting at one end of the boat facing him. Lim was sitting at the other end of the boat where the engine was. Thus, Lek was not in a position to see anything coming in front of the boat since his back was to the front of the boat. Lim would have been able to see what was coming in front of him but since he died without giving a statement to the police, no one knows what he saw or what he did just before the collision.

The collision occurred when another motor boat, ie SF9537, came from the opposite direction and the two boats collided into each other. SF9537 was then being navigated by Lim Choi Chay, the defendant.

As a result of the collision, Lek was thrown onto the base of the boat but Lim Boon Seng was thrown into the river. He was in the river for a short while and was then pulled up onto SF9537 by the defendant. SF9537 then proceeded to Kangkar where the police was informed of the accident. Lim Boon Seng had a laceration of nine cm on the right front parietal region but appeared to be all right when he reached Kangkar. He was then taken to hospital where he died on 11 July 1981. The cause of